



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0719]**

**RIN 1625-AA00**

### **Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the New Jersey Intracoastal Waterway. The safety zone is needed to protect participants of the 4<sup>th</sup> Annual Ironman 70.3 Atlantic City Triathlon on these navigable waters near Atlantic City, NJ, during a swim event on September 15, 2019. This regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative.

**DATES:** This rule is effective from 5:30 a.m. through 10:30 a.m. on September 15, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0719 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Petty Officer Thomas Welker, U.S. Coast Guard Sector Delaware Bay, Waterways Management Division; telephone 215-271-4814, email Thomas.J.Welker@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

This swim event is listed in the table to 33 CFR 110.506, section (a), row (2), but because this year’s course location has expanded beyond the previously published boundaries, we are issuing a new temporary rule to ensure coverage over the event location. Additionally, we are using “Safety Zone” authorities to issue this rule instead of the “Special Local Regulation” authorities under which we published the permanent rule for this event.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not

publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. We are taking immediate action to ensure the safety of participants and the general public from hazards associated with non-participant vessel movement near the swim event. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by September 15, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the rule must be in effect by September 15, 2019, to mitigate the potential safety hazards associated with the swim event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). DelMoSports, LLC notified the Coast Guard that it will host the 4<sup>th</sup> Annual Ironman 70.3 Atlantic City Triathlon on September 15, 2019. The event will include a 1.2-mile swim with up to 2800 participants. The swim course is on the waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with this swim event scheduled for September 15, 2019, will be a safety concern for participants and for vessels operating within the specified waters of the New Jersey Intracoastal Waterway. The purpose of this rulemaking is to protect participants, spectators, and transiting vessels on certain waters of the New Jersey Intracoastal Waterway before,

during, and after the scheduled event.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from 5:30 a.m. until 10:30 a.m. on September 15, 2019. The safety zone will cover navigable waters of the New Jersey Intracoastal Waterway between the Albany Avenue (Highway 40) bridge in the southwest and New Jersey Intracoastal Waterway Daybeacon 204 in the northeast. Paragraph (a) of the regulation text below provides a detailed description of the location. The duration of the zone is intended to ensure the safety of participants and vessels on these navigable waters before, during, and after the swim event scheduled from 5:30 a.m. to 10:30 a.m. on September 15, 2019. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If the COTP Delaware Bay or a designated representative grants authorization to enter, transit through, anchor in, or remain within the safety zone, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Local Notice to Mariners and Broadcast Notice to Mariners.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The impact of this rule is not significant for the following reasons: (1) the enforcement period will last five hours when vessel traffic is usually low; (2) although non-participant persons and vessels may not enter, transit through, anchor in, or remain with the safety zone without authorization from the COTP Delaware Bay or a designated representative, surrounding channels within the New Jersey Intracoastal Waterways will remain unaffected. Persons and vessels will be able to operate in the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene actual notice from designated representatives.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the

Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 4 hours that will prohibit entry within certain navigable waters during a swim event. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.



2. Add § 165.T05-0719 to read as follows:

§ 165.T05-0719 Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ.

(a) Location. The following area is a safety zone: All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: originating at the southeast portion of the Albany Avenue Bridge where the bridge crosses the shoreline at approximate position latitude 39°21'12" N., longitude 074°27'23" W.; thence northeasterly along the shoreline to latitude 39°21'43" N., longitude 074°26'41" W.; thence west across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21'42" N., longitude 074°26'51" W.; thence west along the shoreline to latitude 39°21'41" N., longitude 074°26'55" W.; thence southwest across the mouth of Beach Thorofare to the shoreline at latitude 39°21'35" N., longitude 074°27'06" W.; thence southwest along the shoreline to the northeast portion of the Albany Avenue Bridge where the bridge crosses the shoreline at approximate position latitude 39°21'16" N., longitude 074°27'26" W.; thence south along the eastern, outermost edge of the bridge to the point of origin.

(b) Definitions As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF-FM channel 16 or 215-271-4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This zone will be enforced from approximately (but no earlier than) 5:30 a.m. to approximately (but not later than) 10:30 a.m. on September 15, 2019.

Dated: September 06, 2019

Jonathan D. Theel,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port Delaware Bay.

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